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9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA
 11 (HON. THOMAS J. WHELAN)

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 vs.

15 JEFFREY LEE MCDANIEL,

16 Defendant.

Case No. 10CR2047-W

STATEMENT OF FACTS AND
 MEMORANDUM OF POINTS
 AND AUTHORITIES IN
 SUPPORT OF DEFENDANT'S
 MOTION TO:
 1) COMPEL DISCOVERY; AND
 2) LEAVE TO FILE FURTHER
 MOTIONS

17 Date: June 7, 2010

18 Time: 9:00 a.m.

19 **1. Statement of the Facts.**

20 One April 21, 2010, Federal agents executed a search warrant at Jeffrey Lee McDaniel's home
 21 and seized his computer and numerous images depicting child pornography. Mr. McDaniel has
 22 been charged with the distribution of child pornography. At the time of the filing of these
 23 motions, the government has provided limited discovery to the defense. As such, a statement of
 24 facts cannot be provided.

25 **2. The Court should compel the Government to Produce Discovery.**

26 Jeffrey Lee McDaniel ("Mr. McDaniel") makes the following discovery motion pursuant to
 27 Rule 12(b)(4) and Rule 16. This request is not limited to those items that the prosecutor has
 28 actual knowledge of, but rather includes all discovery listed below that is "in the possession,

1 custody, or control of any federal agency participating in the same investigation of the defendant."
2 *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir.), *cert. denied*, 493 U.S. 858 (1989).

3 (1) Mr. McDaniel's Statements. The government must disclose: (1) copies of any written or
4 recorded statements made by Mr. McDaniel; (2) copies of any written record containing the
5 substance of any statements made by Mr. McDaniel; and (3) the substance of any statements made
6 by Mr. McDaniel which the government intends to use, for any purpose, at trial. *See* Fed. R.
7 Crim. P. 16(a)(1)(A).

8 (2) Mr. McDaniel's Prior Record. Mr. McDaniel requests disclosure of his prior record. *See*
9 Fed. R. Crim. P. 16(a)(1)(B).

10 (3) Documents and Tangible Objects. Mr. McDaniel requests the opportunity to inspect,
11 copy, and photograph all documents and tangible objects which are material to the defense or
12 intended for use in the government's case-in-chief or were obtained from or belong to him. *See*
13 Fed. R. Crim. P. 16(a)(1)(C).

14 (4) Reports of Scientific Tests or Examinations. Mr. McDaniel requests the reports of all tests
15 and examinations which are material to the preparation of the defense or are intended for use by
16 the government at trial. *See* Fed. R. Crim. P. 16(a)(1)(D). Mr. McDaniel notes that no fingerprint
17 analyses have been produced. If such analyses exist, Mr. McDaniel requests a copy.

18 (5) Expert Witnesses. Mr. McDaniel requests the name and qualifications of any person that
19 the government intends to call as an expert witness. *See* Fed. R. Crim. P. 16(a)(1)(E). In addition,
20 Mr. McDaniel requests written summaries describing the basis and reasons for the expert's
21 opinions. *See id.* This request specifically applies to any fingerprint and handwriting experts that
22 the government intends to call.

23 (6) Brady Material. Mr. McDaniel requests all documents, statements, agents' reports, and
24 tangible evidence favorable to the defendant on the issue of guilt or punishment. *See Brady v.*
25 *Maryland*, 373 U.S. 83 (1963).

26 In addition, impeachment evidence falls within the definition of evidence favorable to the
27 accused, and, therefore, Mr. McDaniel requests disclosure of any impeachment evidence
28 concerning any of the government's potential witnesses, including prior convictions and other

1 evidence of criminal conduct. *See United States v. Bagley*, 473 U.S. 667 (1985); *United States*
2 *v. Agurs*, 427 U.S. 97 (1976). In addition, Mr. Moreno-Lopez requests any evidence tending to
3 show that a prospective government witness: (i) is biased or prejudiced against the defendant; (ii)
4 has a motive to falsify or distort his or her testimony; (iii) is unable to perceive, remember,
5 communicate, or tell the truth; or (iv) has used narcotics or other controlled substances, or has
6 been an alcoholic.

7 (7) Request for Preservation of Evidence. Mr. McDaniel specifically requests the preservation
8 of all physical or documentary evidence that may be destroyed, lost, or otherwise put out of the
9 possession, custody, or care of the government and which relate to the arrest or the events leading
10 to the arrest in this case.

11 (8) Any Proposed 404(b) Evidence. "[U]pon request of the accused, the prosecution . . . shall
12 provide reasonable notice in advance of trial . . . of the general nature" of any evidence the
13 government proposes to introduce under Rule 404(b). Fed. R. Evid. 404(b). Mr. McDaniel
14 requests such notice three weeks before trial in order to allow for adequate trial preparation.

15 (9) Witness Addresses. Mr. McDaniel requests the name and last known address of each
16 prospective government witness. He also requests the name and last known address of every
17 witness to the crime or crimes charged (or any of the overt acts committed in furtherance thereof)
18 who will not be called as a government witness.

19 (10) Jencks Act Material. Mr. McDaniel requests production in advance of trial of all material
20 discoverable pursuant to the Jencks Act, 18 U.S.C. § 3500. Advance production will avoid
21 needless delays at pretrial hearings and at trial. This request includes any "rough" notes taken by
22 the agents in this case; these notes must be produced pursuant to 18 U.S.C. § 3500(e)(1). This
23 request also includes production of transcripts of the testimony of any witness before the grand
24 jury. *See* 18 U.S.C. § 3500(e)(3).

25 (11) Residual Request. Mr. McDaniel intends by this discovery motion to invoke his rights
26 to discovery to the fullest extent possible under the Federal Rules of Criminal Procedure and the
27 Constitution and laws of the United States. Mr. McDaniel requests that the government provide
28 him and his attorney with the above-requested material sufficiently in advance of trial.

